

**NATIONWIDE MUTUAL INSURANCE COMPANY**

**One Nationwide Plaza  
Columbus, Ohio 43215-2220**

**NAIC COMPANY CODE 23787**

**MARKET CONDUCT EXAMINATION REPORT  
as of December 31, 2005**

**PREPARED BY INDEPENDENT CONTRACTOR FOR THE  
COLORADO DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF INSURANCE**

**NATIONWIDE MUTUAL INSURANCE COMPANY**  
**One Nationwide Plaza**  
**Columbus, Ohio 43215-2220**

**MARKET CONDUCT**  
**EXAMINATION REPORT**  
**as of**  
**December 31, 2005**

**Prepared by**  
**Kathleen M. Bergan, CIE**  
**Independent Contract Examiner**

March 30, 2007

Honorable Marcy Morrison  
Commissioner of Insurance  
State of Colorado  
1560 Broadway, Suite 850  
Denver, Colorado 80202

Commissioner Morrison:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., a limited Market Conduct examination of the private passenger automobile business practices of Nationwide Mutual Insurance Company has been conducted.

The Company's underwriting records were examined at the examiner's home, while the claims records were examined at its Colorado regional office, 7979 East Tufts Avenue Parkway, Suite 1700, Denver, Colorado 80217.

The examination covered the period from January 1, 2005 to December 31, 2005.

A report of the examination of Nationwide Mutual Insurance Company is herewith, respectfully submitted.

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Kathleen M. Bergan, CIE

Independent Market Conduct Examiner

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OF  
NATIONWIDE MUTUAL INSURANCE COMPANY  
TABLE OF CONTENTS**

<b><u>SECTION</u></b>	<b><u>PAGE</u></b>
I. SALUTATION.....	3
II. COMPANY PROFILE.....	5
III. PURPOSE AND SCOPE OF EXAMINATION.....	6
IV. EXAMINATION METHODOLOGY.....	8
V. EXAMINATION REPORT SUMMARY.....	10
VI. PERTINENT FACTUAL FINDINGS.....	12
A. PRIVATE PASSENGER AUTO	
1. Company Operations and Management.....	13
2. Claims Practices.....	18
VII. SUMMARY OF ISSUES AND RECOMMENDATIONS.....	20
VIII. EXAMINATION REPORT SUBMISSION.....	21

**COMPANY PROFILE**

Nationwide Mutual Insurance Company (hereinafter referred to as the “Company”) was incorporated on December 16, 1925 under the laws of the State of Ohio. The Company commenced business on April 14, 1926 under the sponsorship of The Ohio Farm Bureau Federation to provide automobile insurance for Farm Bureau members. Operations were conducted under the title Farm Bureau Mutual Automobile Insurance Company until September 1, 1955 when the title was changed to the present name.

The Company was licensed in the State of Colorado on April 23, 1957. The Company is currently licensed in all fifty (50) states.

The Company sells products as a direct writer employing non-resident licensed agents.

As of December 31, 2005, the Company had reported premium in Colorado of \$6,222,000 for private passenger automobile insurance, representing a .22% market share.\*

\*Data as reported in the 2005 Colorado Insurance Industry Statistical Report.

### **PURPOSE AND SCOPE OF EXAMINATION**

This market conduct examination report was prepared by an independent examiner contracting with the Colorado Division of Insurance (Division) for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado insurance law §10-1-204, C.R.S., which empowers the Commissioner of Insurance to supplement the Division's resources to conduct market conduct examinations. The findings in this report, including all work products developed in the production of this report, are the sole property of the Division.

The purpose of the examination was to determine the Company's compliance with certain Colorado insurance laws related to private passenger automobile insurance. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Division. In reviewing material for this report the examiner relied primarily on records and material maintained and/or submitted by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2005 to December 31, 2005.

File sampling was based on a review of underwriting and claims files that were systematically selected using ACL™ software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero dollar (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero dollar (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g., timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

The report addresses private passenger automobile insurance and contains information regarding exceptions to Colorado insurance laws. The examination included review of the following:

1. Company Operations and Management
2. Complaint Handling
3. Underwriting and Rating
4. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance of such practices by the Division. Examination findings may result in administrative action by the Division.

**EXAMINATION METHODOLOGY**

The examination consisted of a review of the Company's private passenger automobile operations and management, complaints, underwriting, rating, and claims practices to determine compliance with Colorado insurance laws as outlined in Exhibit 1.

**Exhibit 1**

<b>Statute or Regulation</b>	<b>Subject</b>
Section 10-1-128, C.R.S.	Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration.
Section 10-3-1103, C.R.S.	Unfair methods of competition and unfair or deceptive acts or practices prohibited.
Section 10-3-1104, C.R.S.	Unfair methods of competition and unfair or deceptive acts or practices.
Section 10-4-403, C.R.S.	Standards for rates – competition – procedure – requirement for independent actuarial opinions regarding 1991 legislation.
Section 10-4-404.5, C.R.S.	Rating plans – property and casualty type II insurers – rules.
Section 10-4-413, C.R.S.	Records required to be maintained.
Section 10-4-602, C.R.S.	Basis for cancellation.
Section 10-4-603, C.R.S.	Notice.
Section 10-4-604, C.R.S.	Nonrenewal.
Section 10-4-605, C.R.S.	Proof of notice.
Section 10-4-609, C.R.S.	Insurance protection against uninsured motorists-applicability.
Section 10-4-610, C.R.S.	Property damage protection against uninsured motorists.
Section 10-4-611, C.R.S.	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613, C.R.S.	Glass repair and replacement.
Section 10-4-614, C.R.S.	Inflatable restraint systems - replacement - verification of claims.
Section 10-4-618, C.R.S.	Unfair or discriminatory trade practices – legislative declaration.
Section 10-4-626, C.R.S.	Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 6.
Section 10-4-627, C.R.S.	Discriminatory standards – premiums – surcharges – proof of financial responsibility requirements.
Section 10-4-628, C.R.S.	Refusal to write – changes in – cancellation – nonrenewal of policies prohibited.
Section 10-4-629, C.R.S.	Cancellation-renewal-reclassification.
Section 10-4-630, C.R.S.	Exclusion of named driver.
Section 10-4-632, C.R.S.	Reduction in rates for drivers aged fifty-five or older who complete a driver's education course – legislative declaration.
Section 10-4-633, C.R.S.	Certification of policy and notice forms.
Section 10-4-634, C.R.S.	Assignment of payment for covered benefits.
Section 10-4-642, C.R.S.	Prompt payment of direct benefits - legislative declaration - definitions.
Insurance Regulation 1-1-6	Concerning The Elements Of Certification For Accident and Health Forms, Private Passenger Automobile Forms, Commercial Automobile with Individual Owned Private Passenger Automobile-Type Endorsement Forms, Claims-Minimum Liability Forms, Preneed Funeral Contracts and Excess Loss Insurance in Conjunction with Self-Insured Employer Benefit Plans under the Federal "Employee Retirement Income Security Act"
Insurance Regulation 1-1-7	Market Conduct Record Retention
Insurance Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests
Insurance Regulation 5-1-2	Application and Binder Forms
Insurance Regulation 5-1-10	Rate and Rule Filing Submissions Property and Casualty Insurance

Insurance Regulation 5-2-1	Relative Value Schedule for No-Fault.
Insurance Regulation 5-2-2	Concerning Renewal of Automobile Insurance Policies – Excluded Named Drivers
Insurance Regulation 5-2-12	Concerning Automobile Insurance Consumer Protections
Insurance Regulation 5-2-15	Concerning Consumer Protection for Vehicle Valuation and Rental Reimbursement
Insurance Regulation 6-1-1	Limiting coverage

### **Company Operations and Management**

The examination consisted of a review of Company management, quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

### **Complaint Handling**

The examination consisted of a review of complaints entered into the Division's complaint database compared against the Company's complaint log to determine complaint activity and accuracy of recording.

### **Underwriting and Rating**

For the period under examination, systematically selected samples of underwriting files were taken as follows:

<b>Review Lists</b>	<b>Population</b>	<b>Sample Size</b>	<b>Percentage to Population</b>
Nonrenewals	3,115	50	1.61%
Surcharges	Unknown	0	0%
Cancellations	4	4	100%

The examiner also reviewed rate and rule filings, statistical justifications, and methodology submitted to the Division for the period under examination. This information was compared against a sample of in-force policies rated by coverage selection to determine compliance with filed base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations. A sample of agents submitting new business was verified against the Division's producer database for licensing compliance.

### **Claims Practices**

For the period under examination, the following claims samples were systematically selected to determine compliance with claims handling practices and manual rules:

<b>Review Lists</b>	<b>Population</b>	<b>Sample Size</b>	<b>Percentage to Population</b>
Claims Paid	1,589	50	3.15%
Claims Closed Without Payment	155	50	32%
Medical Claims Paid	23	23	100%
PIP Claims	79	50	63%

### **EXAMINATION REPORT SUMMARY**

During September 2005, the Company and two (2) other affiliates (Nationwide Mutual Fire Insurance Company and Nationwide Property and Casualty Insurance Company) began migrating policies to a fourth affiliate, (Nationwide Insurance Company of America or NICOA). As a result of the policy migration from the three (3) Nationwide Companies to NICOA, nonrenewal notices were sent to all policyholders informing them of the nonrenewal of their policies by the former companies and policy transfer to NICOA.

The primary focus and emphasis of this market conduct examination centered on underwriting and the impact or effect the transfer of these policies had on insureds. Since this block of business was transferred to an affiliate, no new application process was performed for these existing policyholders. A sample of policies that had been written in the three (3) other Nationwide companies was traced from actual policy coverage and premium pages to those of the new company (NICOA), to ensure that the same coverage chosen by an insured was properly transferred and verified according to the Companies' documentation.

The examination resulted in three (3) issues arising from the Company's apparent failure to comply with Colorado insurance laws that govern all property and casualty insurers operating in Colorado.

#### **Company Operations and Management:**

In the area of company operations and management the following three (3) issues were identified:

- **Issue A: Failure of the Company to file an annual forms certification by July 1, as required by Colorado insurance law.**
- **Issue B: Failure of the Company to provide surcharge notices and related documentation for examination.**

#### **Complaint Handling:**

In the area of complaint handling, no issues are addressed in this report.

#### **Underwriting and Rating:**

In the area of underwriting and rating, no issues are addressed in this report.

#### **Claims Practices:**

In the area of claims practices, the following one (1) issue was identified:

- **Issue C: Failure to provide a complete disclosure of the provisions of the unfair or discriminatory trade practices law to beneficiaries or claimants within three (3) business days after a claim is made.**

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Division.

Results of previous market conduct examinations of the Company are available on the Division's website at [www.dora.state.co.us/insurance](http://www.dora.state.co.us/insurance) or by contacting the Division.

**NATIONWIDE MUTUAL INSURANCE COMPANY**

**PERTINENT FACTUAL FINDINGS**

**COMPANY OPERATIONS AND MANAGEMENT**

**Issue A: Failure of the Company to file an annual forms certification by July 1, as required by Colorado insurance law.**

Section 10-4-633, C.R.S., Certification of policy and notice forms, states in part:

- (1) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner issued or delivered to any policyholder in Colorado. Such listing shall be submitted no later than July 1 of each year and shall contain a certification by an officer of the organization that to the best of the officer's knowledge each policy form, endorsement, or notice form in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.
- (3) The commissioner shall have the power to examine and investigate insurers authorized to conduct business in Colorado to determine whether automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner comply with the certification of the organization and statutory mandates.

Colorado Insurance Regulation 1-1-6, Concerning The Elements Of Certification For Accident and Health Forms, Private Passenger Automobile Forms, Commercial Automobile with Individually-Owned Private Passenger Automobile-Type Endorsement Forms, Claims-Made Liability Forms, Preneed Funeral Contracts and Excess Loss Insurance in Conjunction with Self-Insured Employer Benefit Plans under the Federal "Employee Retirement Income Security Act" promulgated pursuant to §§ 10-1-109, 10-4-419, 10-4-633, 10-15-105 and 10-16-107.2 and 10-16-119, C.R.S., states in part:

#### Section 4. Definitions

For the purposes of this regulation:

- A. "Annual Report for automobile private passenger insurance" shall mean a list of all automobile private passenger policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of reductions in coverage and any other such forms as requested by the commissioner currently in use and issued or delivered to any policyholder in Colorado, including the titles of the programs or products affected by the forms.

#### Section 5. Rules

- B. Not later than July 1 of each year, each private passenger automobile insurer, commercial automobile with an "individually-owned private passenger automobile-type endorsement" which is attached to a commercial automobile policy, preneed contract and claims-made liability insurer shall file an Annual Report of policy forms including a fully-executed certificate of compliance.

It appears that the Company is not in compliance with Colorado insurance law in that the annual forms certification was not filed until October 10, 2005, as evidenced by the date stamp of the Division.

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**Recommendation Number 1:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-4-633, C.R.S., and Colorado Insurance Regulation 1-1-6. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has implemented necessary procedural changes to ensure that the annual forms certification will be filed in a timely manner as required by Colorado insurance law.

**Issue B: Failure of the Company to provide surcharge notices and related documentation for examination.**

Section 10-4-413, C.R.S., Records required to be maintained, states in part:

- (1) Every insurer, rating organization, or advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this part 4 applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization to the extent that the insurer uses the rates, rating plans, rating systems, or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection by the commissioner at any time, upon reasonable notice.

Colorado Insurance Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of § 10-1-109(1), C.R.S., states in part:

**Section 4. Records Required For Market Conduct Purposes**

- A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, ... Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.

**Section 5. Policy Records**

- A. The following records shall be maintained: A policy record shall be maintained for each policy issued. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage. If a policy is terminated, either by the insurer or the policyholder, documentation supporting the termination and account records indicating a return of premiums, if any, shall also be maintained. Policy records need not be segregated from the policy records of other states so long as the records are

readily available to market conduct examiners as required under this regulation.

B. Policy records shall include at least the following:

- (4) Any guidelines, manuals or other information necessary for the reconstruction of the rating, underwriting, and claims handling of the policy. Presentation at the site of a market conduct examination of a single copy of each of the above shall satisfy this requirement. If a rating, underwriting, or claims handling record is computer based, the records used to input the information into the computer system shall also be available to the examiners. These types of records include, but are not limited to, the application, where applicable, the policy form including any amendments or endorsements, rating manuals, underwriting rules, credit reports or scores, claims history reports, previous insurance coverage reports, e.g., MIB questionnaires, internal reports, loans and underwriting and rating notes.

The surcharge data provided by the Company to derive samples contained no information for the period under review; therefore, a population total is unknown. All information contained in this data was not germane to this examination and the Company did not provide another data call listing for surcharges. The Company provided one surcharge for review for the period covered by this examination, but since it was not selected from a sample of surcharged files, it was not considered in the review.

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**Recommendation Number 2:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-4-413, C.R.S., and Colorado Insurance Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has reviewed its procedure for record maintenance and implemented necessary procedural changes in order to ensure compliance with Colorado insurance law.

**CLAIMS PRACTICES**

**Issue C: Failure to provide a complete disclosure of the provisions of the unfair or discriminatory trade practices law to beneficiaries or claimants within three (3) business days after a claim is made.**

Section 10-4-618, C.R.S., Unfair or discriminatory trade practices - legislative declaration, states in part:

- (1)(b) The general assembly declares that the purpose of this section is:
  - (I) To safeguard the public against monopolies, trusts, and market barriers and to foster and encourage competition by prohibiting unfair and discriminatory insurance practices that impede fair and honest competition;
  - (II) To ensure that all consumers benefit from such competition and expansion; ...
- (3) An insurer or its agent that issues or renews a policy shall:
  - (f) Provide oral or written notice of the provisions of this section to the beneficiary or claimant within three business days after a claim is made;
- (4) An insurer is not required to furnish the notices required by this section more than once to each beneficiary or claimant for each claim.

The Company is required to provide oral or written notice regarding the provisions of this section within three (3) business days after a claim is made. In review of the claims files provided, there appeared to be no evidence in any of the files that the Company complied with this requirement.

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**Recommendation Number 3:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-4-618, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has reviewed its claims handling procedures to ensure that the provisions of the unfair or discriminatory trade practices law are provided to beneficiaries or claimants within three (3) business days after a claim is made as required by Colorado insurance law.

## Summary of Issues and Recommendations

ISSUE	REC #	PAGE
Company Operations and Management		
<b>Issue A: Failure of the Company to file an annual forms certification by July 1, as required by Colorado insurance law.</b>	1	15
<b>Issue B: Failure of the Company to provide surcharge notices and related documentation for examination.</b>	2	17
Claims Practices		
<b>Issue C: Failure to provide a complete disclosure of the provisions of the unfair or discriminatory trade practices law to beneficiaries or claimants within three (3) business days after a claim is made.</b>	3	19

Independent Market Conduct Examiner

Kathleen M. Bergan, CIE

Participated in this examination and in the preparation of this report.